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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 191211-0107]

RIN 0648-BI35

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast

Groundfish Fishery; Pacific Whiting; Pacific Coast Groundfish Fishery

Management Plan; Amendment 21-4; Catch Share Program, 5-Year Review,

Follow-on Actions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule implements changes to the Pacific Coast Groundfish Trawl Catch Share Program identified during the Catch Share Program 5-Year Review. This action is intended to modify outdated regulations, complete outstanding program elements, and respond to problems identified following implementation of the Catch Share Program. This action revises regulations consistent with Amendment 21-4 to the Pacific Coast Groundfish Fishery Management Plan, and revises elements in four areas of the Catch Share Program.

DATES: This final rule is effective *[Insert 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of supporting documents referenced in this

final rule, including the Categorical Exclusions (CE) and final regulatory flexibility analysis (FRFA), are available from *www.regulations.gov* or from the NMFS West Coast Region Groundfish Fisheries website at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html*.

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I. Background

On January 1, 2011, NMFS implemented the Pacific Coast Groundfish Trawl Catch Share Program (Catch Share Program) through Amendment 20 and Amendment 21 (75 FR 60867; October 1, 2010) to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 established a limited entry Individual Fishing Quota (IFQ) system for shorebased trawl vessels and cooperatives for the at-sea Pacific whiting mothership (MS) and catcher-processor (C/P) sectors. The Catch Share Program was intended to increase net economic benefits and create individual economic stability for trawl fishery participants, provide full utilization of the trawl sector allocation, and achieve individual accountability for catch and bycatch in the Pacific Coast groundfish fishery. Amendment 21 established fixed allocations for limited entry trawl participants. These allocations were intended to improve fishery management under the Catch Share Program by streamlining its administration, providing stability to the fishery, and addressing bycatch.

After implementation in 2011, NMFS collected both baseline and annual socioeconomic data to judge the effectiveness of the Catch Share Program for the 5-Year Review, and collected data annually thereafter, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). To aid in reviewing and refining the Catch Share Program, the Council appointed the Community Advisory Board (CAB) to provide the perspective of fishing communities on Catch Share Program performance, potential improvements, and other advice at the Council's request to inform the program review and develop follow-on actions.

Socioeconomic data collections and input from the CAB helped to inform the 5-Year Review of the Catch Share Program, which the Council approved in November

2017. From the findings of the 5-Year Review, the Council identified a range of potential follow-on actions in four areas of the Catch Share Program to refine and enhance the program. These follow-on actions are being implemented through Amendment 21-4, which includes an FMP amendment as well as the regulatory changes in this final rule.

Additional discussion of the background and rationale for the Council's development of Amendment 21-4 and the Catch Share Program 5-Year Review is included in the proposed rule for this action (84 FR 54561; October 10, 2019) and is not repeated here. Detailed information, including the supporting documentation the Council considered while developing these recommendations, is available at the Council's website, www.pcouncil.org.

The measures in this final rule will: allow the at-sea whiting sector to more fully and efficiently harvest its allocation through flexible set-aside management of constraining bycatch species; improve utilization of individual fishing quota (IFQ) and overall economic efficiency for the shorebased IFQ trawl sector; ensure fair and equitable access to resources in the event of failure or voluntary dissolution of the at-sea Pacific whiting catcher-processor (C/P) cooperative agreement; and provide a more robust evaluation of Catch Share Program performance. This action also includes clarifying non-substantive changes to the regulatory language for the Catch Share Cost Recovery Program.

Concurrent with these regulatory changes, an amendment to the Pacific Coast Groundfish FMP is required to implement Amendment 21-4 as recommended by the Council. The FMP amendment will implement at-sea set-aside bycatch management by removing from the FMP fixed formulas used to determine (1) bycatch allocations of

widow rockfish, and (2) set-aside amounts of darkblotched rockfish and Pacific Ocean perch (POP). Set-aside amounts would instead be determined through the biennial harvest specifications process. On August 30, 2019, NMFS published a Notice of Availability (NOA) in the **Federal Register** (84 FR 45706) to solicit public comment on the proposed FMP amendment. No public comments on the proposed amendment were received during the comment period. NMFS is approving the FMP amendment concurrent with this final rule.

II. Summary of Regulations

A. At-sea Whiting Fishery Set-Aside Bycatch Management

This final rule changes management for bycatch of four species in the at-sea Pacific whiting C/P and MS sectors: canary rockfish, widow rockfish, darkblotched rockfish and POP. Instead of being managed through the use of capped bycatch allocations, canary rockfish and widow rockfish bycatch will be managed as “set-asides,” which are an expected amount of bycatch deducted from the total trawl sector allocations for these species. At-sea bycatch of darkblotched rockfish and POP were previously converted from bycatch allocations to set-asides in Amendment 21-3 (83 FR 757; January 8, 2018). The Council will recommend set-aside amounts for darkblotched rockfish, POP, canary rockfish, and widow rockfish during the biennial harvest specifications and management measures process.

These changes provide NMFS and the Council increased flexibility to determine set-asides amounts during the biennial harvest specifications. NMFS is not required to take action to close the at-sea sectors if catch exceeds the set-aside amounts for these four bycatch species. However, the Council and NMFS retain authority to implement a

routine inseason action (*e.g.*, a time or area closure) if catch of any species exceeds its set-aside amount with the risk of exceeding harvest specifications, having unforeseen impact on another fishery, or causing other conservation concerns. This final rule will provide the at-sea sectors greater economic opportunity, even in the event bycatch of these rockfish species exceeds expected levels. This action would help ensure the at-sea sectors can fully attain their Pacific whiting allocations by establishing bycatch set-asides which, when reached, do not require automatic fishery closure. This action would also allow the Council to adjust at-sea bycatch set-asides for the whiting fishery on a biennial basis to match expected bycatch levels with prevailing fishery conditions.

B. Shorebased IFQ Trawl Sector Quota Transfers

This final rule provides participants in the shorebased IFQ sector a post-season transfer period to cover quota pound (QP) deficits from the prior year with unused or surplus QP remaining from the same year. Unused QP will be transferable only for the purpose of covering a deficit remaining from the previous year. Each year, post-season QP transfers will be permitted from January 1 until March 14, and NMFS will provide advance public notice announcing the ending date of the post-season transfer period. At the end of the post-season transfer period, NMFS will complete end-of-the-year Quota Share (QS) account reconciliation, and issue remaining surplus QP as carryover QP. Quota issued for the current year may also be used to cover any prior-year deficits which remain following the post-season transfer period.

In covering a previous year's deficit, participants in the shorebased IFQ sector will not be restricted by annual vessel QP limits under this final rule. These limits restrict the total amount of QP a vessel may acquire in a single year. Removing the annual vessel

QP limit restriction during the post-season transfer period provides relief to vessels that experience unexpected large bycatch events, known as “lightning-strikes,” which have, in the past, exceeded annual vessel QP limits. Under this action, vessels with deficit amounts over annual vessel QP limits could acquire sufficient QP to cover the entire deficit through post-season trading, or by using QP issued in the following year. This action will remove the annual vessel QP limits only when covering deficits in the following year. While Catch Share Program participants would no longer be limited by the annual vessel QP limits in curing deficits, they would violate the carryover regulations if the deficit exceeds the deficit carryover limit. The deficit carryover limit is the amount of deficit QP that a vessel may carry into the following fishing year without violating QP carryover regulations. Under this action, vessel owners may experience regulatory consequences for a QP deficit, but will avoid economic hardship as a result of not fishing for multiple years while covering a large deficit under annual vessel QP limits.

This final rule also eliminates the September 1 deadline to transfer QP from QS account to a vessel account. Under this action, QP will remain in a QS account and available for transfer to a vessel account for fishing until December 31 of each year for which the QP was issued. The QP that remains in a QS account will be available for post-season trading once transferred to a vessel account after January 1 in the following year, and will not expire until the end of the post-season transfer period.

This action will reduce the overall costs of participation in the Shorebased IFQ sector by ensuring the maximum amount of annual IFQ allocations are used to harvest fish, rather than to cover previous year’s QP deficits.

This action would allow fishery participants to cover the previous year's quota deficits with unused quota from the previous year. This would ensure that, each year, newly issued quota is used to cover catch rather than to cover outstanding deficits, which should maximize the value of quota and its efficient utilization.

C. Catcher-Processor Permit Accumulation Limits

This final rule establishes a permit accumulation limit of five at-sea Pacific whiting C/P-endorsed permits that any one person or entity may own or control, and includes regulations that define "own and control" as it relates to C/P-endorsed permits. The five-permit accumulation limit will take effect only in the event the current at-sea Pacific whiting C/P cooperative fails. When the Catch Share Program was implemented, the Council included a provision that would establish an IFQ program for the at-sea C/P sector should the cooperative agreement fail. This final action includes procedures for determining cooperative failure, and for divestiture of excess permits preceding conversion to an IFQ system.

In the event the C/P-cooperative voluntarily dissolves, or NMFS determines the cooperative agreement has failed, NMFS will announce a divestiture period starting on the date cooperative failure has been determined, and ending on the date an IFQ program is implemented for the at-sea C/P sector or another date specified in the IFQ program implementing regulations. During the divestiture period any individual or entity that owns or controls more than five permits may divest of those permits by sale or trade, or voluntarily abandon permits and allow redistribution of associated QS. After an IFQ-based C/P fishery is implemented, no individual or entity may own or control more than five C/P-endorsed permits, and no person or entity may own or control any quota

associated with permits in excess of the five-permit limit. Following implementation of an at-sea C/P IFQ program, NMFS may revoke any C/P-endorsed permits in excess of the accumulation limit and may redistribute associated QS to other C/P-endorsed permit owners. The current C/P cooperative agreement ensures no individual acquires excessive access privileges to at-sea Pacific whiting resources. However, this action is necessary to ensure fair and equitable access to fishery resources in the absence of the cooperative agreement in the event it voluntarily dissolves or fails.

D. New Data Collections

1. C/P Endorsed Permit Ownership Interest

This final rule establishes an information collection for C/P-endorsed permit owners. The Catch Share Program requires mandatory submission of permit ownership interest information from catcher-vessels and motherships. During annual permit application and renewal, C/P-endorsed permit owners in those sectors are required to submit a Trawl Identification of Ownership Interest form. NMFS collects this information to enforce catcher-vessel accumulation limits and mothership sector accumulation limits that ensure no individual, or entity, obtain excessive limited access privileges. This action establishes the requirement that at-sea C/P-endorsed permit owners also complete the Trawl Identification of Ownership Interest form annually during permit renewal. The form is used to collect basic trawl vessel or permit owner information, such as vessel name, permit number, owner name and legal address, and the names and addresses of other individuals and entities that have an ownership interest and percentage of ownership for the vessel or permit. The information on the C/P sector collected in this form will support future Council decisions in the event accumulation

limits take effect for the at-sea C/P sector as described in section II, part C of this preamble.

2. Quota Share Permit Owner Participation and Economic Data

This final rule requires all QS permit owners to submit annual information to the NMFS Northwest Fisheries Science Center West Coast Economic Data Collection (EDC) Program through a Quota Share Permit Owner survey. All QS permit owners, including those QS permit owners that do not also own, lease, or charter a vessel, shorebased processor, or first/receiver site, must submit information on annual participation in the fishery, as well as costs and earnings related to QS permit ownership. This survey will be collected electronically via web-form during the online QS permit application and renewal process. The deadline for submitting this information will be November 30 of each year, to align with timing of submission for QS permit application and renewals. Information collected through this survey will provide NMFS and the Council with a better understanding of economic costs and benefits conferred to fishery dependent communities through QS permit ownership, and of overall Catch Share Program performance. Improved evaluation of Catch Share Program performance will support sustained fishing community participation in the program, and help minimize adverse economic impacts on fishing communities. This action accomplishes these objectives by collecting information on economic benefits tied to QS ownership and community linkage of QS permit owners. This information will be used to ensure the Catch Share Program provides maximum economic benefits to participating communities.

E. Clarifications to Cost Recovery Regulatory Text

On March 20, 2014, NMFS published a Public Notice (NMFS-SEA-14-12) discussing two clarifications to the Pacific Coast Groundfish Trawl Rationalization Cost Recovery Program that went into effect in January 2014 (78 FR 75268; December 11, 2013). This final rule implements regulatory language necessary to reflect these two program clarifications. The first adjustment clarifies that the deposit principal may be used to refund cost recovery payments made by credit card through *Pay.gov*. The second clarification specifies that in the C/P sector retained fish only, and not discards, are used in calculating ex-vessel revenue as it relates to determining cost recovery fees.

F. Technical Corrections

In addition to necessary regulatory changes to implement the Council's recommendations, this final rule also includes minor technical corrections. Specifically, these minor technical corrections remove obsolete baseline dates included during implementation of the Catch Share Program, such as the years when initial trawl allocations were issued, the first date on which quota transfers were permitted, and the dates when economic data collections were initiated.

III. Comments and Responses

NMFS solicited public comment on the proposed rule implementing the Amendment 21-4 follow-on actions on October 10, 2019 (84 FR 54561). The comment period ended October 29, 2019. NMFS received one public comment letter on behalf of the Pacific Whiting Conservation Cooperative during the comment period for the proposed rule. The four unique comments within that comment letter are summarized and addressed below. Public comment letters, and attached documents, can be viewed, along with the proposed and final rules for this action at www.regulations.gov.

Comment 1: NMFS received one comment of support for various aspects of the proposed rule, including the proposed changes for at-sea set-aside bycatch management, C/P-endorsed permit ownership interest information collection, and cost recovery program clarifications.

Response: NMFS notes this support.

Comment 2: The language of the proposed rule mischaracterized Community Advisory Board (CAB) and Groundfish Advisory Panel (GAP) opposition to the C/P permit accumulation limits during development.

Response: In the proposed rule, NMFS did not intend to imply the CAB or GAP suggested or supported the decision to set C/P permit accumulation limits. The background information presented in the proposed rule is a generalized overview of the timeline and issues selected for development under this action. The proposed rule did not elaborate on the stance of Council advisory bodies, and only stated that these advisory bodies provided input and recommendations. The Council included C/P-permit accumulation limits as part of the follow-on actions. The full record of decision making during the Council process is publicly available on the Council's website www.pcouncil.org/council-operations/council-meetings/past-meetings/.

Comment 3: The proposed rule should not set C/P permit accumulation limits, as the current C/P cooperative structure fulfills Magnuson-Stevens Act requirements that no individual obtain excessive access privileges to fishery resources.

Response: This action does not set accumulation limits for the current cooperatively managed C/P sector, restrict permit transfer between C/P cooperative members, or limit permit ownership under the present cooperative structure of the C/P

sector. NMFS acknowledges that the current cooperative structure of the C/P sector fulfills requirements under section 303A(c)(5)(D) of the Magnuson-Stevens Act that limited access privilege holders do not acquire an excessive share of the total limited access shares in the groundfish program. However, a limit would be required in the event the C/P cooperative agreement does not form in a given year, the cooperative voluntarily dissolves, or the cooperative structure fails. The Council determined that, if the current cooperative structure fails or dissolves, limiting permit ownership to five C/P-endorsed permits an individual or entity may own or control will result in an equitable concentration of limited access privileges for Pacific whiting resources.

Comment 4: The proposed rule lacks clarification on the process and information the NMFS Regional Administrator (RA) would use to make an independent determination of C/P cooperative failure. The proposed rule lacks a specific appeals process in the event NMFS makes an independent determination of cooperative failure.

Response: Under existing regulations, the NFMS RA already has authority to make an independent determination of C/P cooperative failure based on factual information. The language for this provision was first discussed during the Council meetings in March and April 2010. The language for this provision was included in the proposed rule for Amendments 20 and 21 to the Pacific Coast Groundfish FMP (75 FR 53380; August 31, 2010) and implemented through the final rule for Amendment 20 and 21 (75 FR 78344; December 15, 2010).

Under these existing regulations at § 660.160(h)(1)(i) through (iv), NMFS has the authority to make an independent determination of C/P cooperative failure in the event any of the following occurs: (i) Any current C/P-endorsed limited entry trawl permit is

not identified as a C/P cooperative (coop) member in the coop agreement submitted to NMFS during the C/P coop permit application process; (ii) Any current C/P-endorsed permit withdraws from the C/P coop agreement; (iii) The coop members voluntarily dissolve the coop; or (iv) The coop agreement is no longer valid. This final rule implementing Amendment 21-4 does not make any changes to the conditions necessary for determining cooperative failure as already included in the regulations. If NMFS were to determine cooperative failure, the C/P cooperative permit would no longer be considered valid. Prior to making a final determination of cooperative failure, and the C/P cooperative permit becoming no longer valid, NMFS would use the Initial Administrative Determination (IAD) process to provide an explanation for this determination, consistent with the regulations at § 660.25(b)(1)(v). The IAD is a formal written determination that is subject to an appeal within NMFS. Although the C/P cooperative permit is not considered a limited entry permit, regulations at § 660.160(d)(2) state that the IAD for a C/P cooperative permit follows the same process as specified for limited entry permits at § 660.25(g). This existing process includes procedures for appeals in the case that NMFS makes an independent determination of cooperative failure. NMFS notes that each year since the implementation of Amendment 20 and 21, the C/P cooperative manager has consistently submitted a complete cooperative application and agreement, and has notified NMFS of the C/P cooperative's intentions and any material changes to the cooperative agreement.

NMFS acknowledges the utility of an appeals process specific to the determination of C/P cooperative failure. However, establishing such a provision through this action is outside the scope of the Council recommendation, and beyond the scope of

this action. We suggest the appropriate forum to address establishment of a specific appeals process is through the Council process, or in discussion for the next Catch Share Program 5-Year Review, which will begin in 2022.

IV. Changes from Proposed Rule

NMFS did not make any changes from the proposed rule. As such, the regulations provided in this final rule are unchanged from those published in the proposed rule.

V. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this action is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

This final rule does not contain policies with Federalism or “takings” implications as those terms are defined in Executive Order 13132 and Executive Order 12630, respectively.

This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with section 4 of NOAA's Policies and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (Companion Manual for NAO 216-6A). Per section 4B of the Manual, a categorical exclusion (CE) evaluation document has been prepared that evaluates the applicability of the CE.

NMFS prepared a final regulatory flexibility analysis (FRFA) under section 604 of the Regulatory Flexibility Act (RFA), which incorporates the initial regulatory flexibility analysis (IRFA) prepared during the proposed rule stage. A copy of the FRFA and CE memo are available from NMFS (see **ADDRESSES**), and, as per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows.

Final Regulatory Flexibility Analysis

For any rule subject to notice and comment rulemaking, the RFA requires Federal agencies to prepare, and make available for public comment, both an initial and final regulatory flexibility analysis, unless the agency can certify that the proposed and/or final rule would not have a significant economic impact on a substantial number of small entities. These analyses describe the impact on small businesses, non-profit enterprises, local governments, and other small entities as defined by the RFA (5 U.S.C. 603). This analysis is to inform the agency and the public of the expected economic effects of the alternatives, and aid the agency in considering any significant regulatory alternatives that would accomplish the applicable objectives and minimize the economic impact on affected small entities. The RFA does not require that the alternative with the least cost or with the least adverse effect on small entities be chosen as the preferred alternative.

The need for and objective of this final rule is described above in section I “Background” of this preamble and not repeated here.

A Statement of the Significant Issues Raised by the Public Comments in Response to the IRFA

No public comments were received in response to the IRFA.

*The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy
in Response to the Final Rule*

No agency response was required, as no comments were received.

*A Description and, Where Feasible, Estimate of the Number of Small Entities to Which
the Final Rule Will Apply*

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates). A small *harvesting business* has combined annual receipts of \$11 million or less for all affiliated operations worldwide (50 CFR § 200.2).

A small *fish-processing business* is one that employs 750 or fewer persons for all affiliated operations worldwide. NMFS is applying this standard to C/Ps for the purposes of this rulemaking, because these vessels earn the majority of their revenue from selling processed fish.

For *marinas and charter/party boats*, a small business is one that has annual receipts not in excess of \$7.5 million. A *wholesale business* servicing the fishing industry is a small business if it employs 100 or fewer persons on a full- time, part- time, temporary, or other basis, at all its affiliated operations worldwide.

For the purposes of this rulemaking, a *nonprofit organization* is determined to be not dominant in its field of operation if it is considered small under one of the following SBA size standards: *environmental, conservation, or professional organizations*. These organizations are considered small if they have combined annual receipts of \$15 million or less, and *other organizations* are considered small if they have combined annual

receipts of \$7.5 million or less. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

This rule will impact quota share owners. 22 non-whiting quota share permit owners are estimated, based on holdings of first receiver permit affiliation in the non-public West Coast Region permits database, to be primarily engaged in seafood product preparation and packaging. According to the size standard defined above, three of the entities that own three of these permits are considered small. These small processing entities were issued 1.7 percent of the non-whiting quota pounds issued in 2018, the most recent year available. Some of these small processing entities also own groundfish permits, required on both catcher vessels and catcher processors, which would be regulated by the final rule; three small entities primarily engaged in seafood processing own two groundfish permits. 30 groundfish vessel permits are owned by seven entities that are considered large, as estimated using the definition above, as well as self-reported on groundfish permits and first receiver site license permits (self-reported using the definition above). Six of these seven large processing entities were issued 10.2 percent of the non-whiting quota pounds issued in 2018 across sixteen quota share permits.

Entities that are not registered as trusts, estates, governments, or non-profits are assumed to earn the majority of their revenue from commercial fishing. The definition above is thus used for 124 quota share permit owners, who collectively received 76.5 percent of the quota pounds issued in 2018. Limited entry groundfish vessels are required to self-report size across all affiliated entities; of the businesses who earn the majority of their revenue from commercial fishing, one self-reported as large. This entity

owns four groundfish permits and one quota share permit. 118 trawl permits are owned by 117 commercial fishing entities in 2019; 5 of these entities self-reported as large. Although many groundfish trawl permit owners also own quota share, it is not possible with available data to tabulate unique ownership across quota share and groundfish permits, so the numbers provided here likely overestimate the number of entities impacted.

According to the public IFQ Account database, as of June 19, 2018, the City of Monterey owns quota shares of ten species. The U.S. Census estimates the population to be 28,454 as of July 1, 2017, so the City of Monterey would be considered a small governmental jurisdiction by the RFA standard described above. The City of Monterey received 0.5 percent of the quota pounds issued for 2018, according to the public IFQ Account database.

According to the public IFQ Account database, six not-for-profit organizations own quota share in the Catch Share Program and would thus be impacted by the trawl sector allocation under this proposed rule. Five of these would be considered small by the definition above (having 2016 annual receipts as reported on IRS form 990 of \$120-500 thousand dollars), and one would be considered large (having self-reported fiscal year 2017 receipts of \$1.1 billion). Collectively, the five small not-for-profit organizations received 7.2 percent of the non-whiting¹ quota pounds issued in 2018, and the large not-for-profit organization received 0.5 percent. The large not-for-profit

¹ Whiting allocations are issued annually through a separate rulemaking process resulting from international treaty negotiations. See 83 FR 22401, May 15, 2018, for more information and 2018 allocations.

organization owned two limited entry trawl permits which would be impacted by the management measures of the rule. The small not-for-profits owned 3 such permits.

11 personal or family trusts/estates own quota share permits and would thus potentially be impacted by the trawl sector allocation under this proposed rule. All of these are assumed to be smaller than the small entity size standard described above. Collectively, these eight small entities received 4.2 percent of the non-whiting quota pounds issued for 2018. Five of these entities owned five groundfish permits.

Reporting and recordkeeping requirements

This action changes two information collection requirements.

C/P endorsed permit ownership interest form

The modifications include requiring C/P endorsed permit owners to complete Trawl Owner Identification of Interest forms during annual permit renewal under OMB Control Number 0648-0620.

Currently there are 10 C/P endorsed permits approved by NMS in the Catch Share Program. These permits are held by three companies with no single company owning more than five permits. As each company is a controlling entity, three is the minimum number of affected entities that would be expected to submit one Trawl Identification of Ownership Interest form for each C/P endorsed permit. The public reporting burden is expected to require approximately 3.5 minutes for each respondent to complete one form for each permit once per year during C/P endorsed permit renewal. Each form is estimated to cost \$0.35 to copy, and is included when mailed with other application forms. The 10 new respondents would add a total of \$3.50 annual burden costs.

Economic Data Collection from Quota Share Permit Owners

The action would require changes to the Catch Share Program West Coast Economic Data Collection OMB Control Number 0648-0618. The proposed rule would change reporting requirements for owners of Quota Share permits to submit appropriate forms to the West Coast Economic Data Collection. The EDC currently does not require submission of forms from owners of Quota Share permits who do not also own, lease or charter vessels. The final rule would add a requirement for submission of EDC forms from all participants who own a Quota Share permit, including those who do not otherwise participate in the fishery other than owning a Quota Share permit.

Based on EDC response data and the public permit database, the public reporting burden for this requirement is expected to include approximately 178 Quota Share permit owners, of which approximately 158 currently complete EDC forms because they own, lease or charter vessels. The new requirement would include in the EDC collection an additional 20 respondents who are QS permit owners but are not owners, charterers, or lessees of vessels, shorebased processors, or first receiver sites and as a result do not complete any EDC forms. The new QS Permit owner survey is expected to take approximately 1 hour per year for all respondents to complete. 178 respondents will each require approximately 1 hour once a year to complete QS permit owner survey questions. As a result 178 hours will be added to the current EDC burden of 2,224 hours, the new public burden will be a total of 2,402. (158 participants across the three vessel groups [catcher vessels, catcher processors and motherships] each need 8 hours to complete the EDC forms, for a total of 1,264 hours, and 20 hours is estimated for the 48 first receiver/shorebased processor form, for a total of 960 hours. 178 QS permit owners across all categories will require 1 hour, for a total of 178 hours. As a result, one year of

data collection will require a total of 2,224 hours to complete the forms.) Costs associated with this reporting requirements are related to making copies of EDC documents (survey respondents are requested to retain a copy of the completed EDC form) and mailing the surveys. The annual cost associated with these activities is assumed to be \$0.20 per respondent, assuming that the form is sent via certified mail. Total annual costs for all respondents is currently \$4,120 (206 x \$20). 22 new respondents will add an additional cost of \$36.0, for a new total annual cost of \$4,156 [(206 x \$20) + (22 x \$0.20)] for all respondents.

Description of Significant Alternatives to this Final Rule that Minimize Economic Impacts on Small Entities

This rule is not expected to result in adverse impacts to small entities. Thus, there are no significant alternatives to the proposed rule that would minimize adverse economic impacts on small entities.

The Council did consider alternatives to the final rule which would have had a lower level of benefits to small entities. The Council did not consider alternatives that would have had greater benefits to small entities, as these would not have been consistent with other applicable laws.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity

is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office (see **ADDRESSES**), and the guide will be included in a notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, click on the “subscribe” link on the following website: http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html. The guide and this final rule will also be available on the West Coast Region’s website (see **ADDRESSES**) and upon request.

Paperwork Reduction Act (PRA) Recordkeeping and Reporting Requirements

This action contains changes to two information collection requirements, described in section II, part D of this final rule, which have been approved by the Office of Management and Budget (OMB). The first change, under OMB Control Number 0648-0618, West Coast Groundfish Trawl Economic Data Collection, requires any owner of a QS permit to submit annual economic information related to QS ownership. This is a change from previous regulations that required collection of economic information only from QS permit owners that also own, lease, or charter, vessels, shorebased processors, or first receiver sites. This change will affect an estimated 178 QS permit owners, and require 1 hour per year for each respondent. Costs associated with this collection are \$0.20 per survey for respondents to retain a copy of the survey for their records, which will increase the total cost to public by \$35.60.

The second change in collection requirements, under OMB Control Number 0648-0620, Pacific Coast Groundfish Trawl Rationalization Program Permit and License

Information Collection, requires C/P endorsed permit owners to submit Trawl Interest of Ownership forms during annual permit renewal. This is a change from previous requirements for the collection of annual ownership interest information from only mothership and catcher-vessel permit owners. This change will affect three fishing companies that own the ten existing C/P endorsed permits. Respondents will require approximately 45 minutes per permit to complete the form in the first year, and 3 minutes per permit in subsequent years. Mailing and copy costs of \$0.35 per form will increase the total cost to public by \$3.50.

Executive Order 13175

Pursuant to Executive Order 13175, this final rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson- Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indians.

Dated: December 11, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.55:

- a. Revise paragraphs (a), (c)(1), (d), and (j), and
- b. Remove and reserve paragraph (f)(2).

The revisions read as follows:

§ 660.55 Allocations.

(a) *General.* The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, separate allocations for the trawl and nontrawl fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, for those species not subject to the trawl and nontrawl allocations specified under Amendment 21 and in paragraph (c)(1) of this section, separate allocations for the limited entry and open access fisheries may be

established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

* * * * *

(c)* * *

(1) Species/species groups and areas allocated between the trawl and non-trawl fisheries are allocated based on the amounts and percentages in the table below. IFQ species not listed in the table below are allocated between the trawl and nontrawl fisheries through the biennial harvest specifications process.

Table 1 to paragraph (c)(1) -- Allocation Amounts and Percentages for Limited Entry Trawl and Non-Trawl Sectors Specified for FMP Groundfish Stocks and Stock Complexes

Stock or complex	All non-treaty LE trawl sectors %	All non-treaty non-trawl sectors %
Lingcod	45	55
Pacific Cod	95	5
Sablefish S. of 36° N. lat.	42	58

PACIFIC OCEAN PERCH	95	5
WIDOW	91	9
Chilipepper S. of 40°10' N. lat.	75	25
Splitnose S. of 40°10' N. lat.	95	5
Yellowtail N. of 40°10' N. lat.	88	12
Shortspine N. of 34°27' N. lat.	95	5
Shortspine S. of 34°27' N. lat.	50 mt	Remaining Yield
Longspine N. of 34°27' N. lat.	95	5
DARKBLOTCHED	95	5
Minor Slope RF North of 40°10' N. lat.	81	18
Minor Slope RF South of 40°10' N. lat.	63	37
Dover Sole	95	5
English Sole	95	5
Petrale Sole	95	5
Arrowtooth Flounder	95	5
Starry Flounder	50	50

Other Flatfish	90	10
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(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation amounts and percentages as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for species/species groups and areas. For IFQ species the trawl allocation is further subdivided within each of the trawl sectors (MS, C/P, and IFQ) as specified in § 660.140, 660.150, and 660.160 of subpart D. The whiting allocation is further subdivided among the trawl sectors as specified in paragraph (c)(1)(i) of this section.

(ii) *Nontrawl fishery allocation.* For each species/species group and area, the nontrawl fishery allocation is derived by subtracting from the corresponding harvest guideline the trawl allocations specified in paragraph (c) of this section and during the biennial harvest specifications. The nontrawl allocation will be shared between the limited entry fixed gear, open access, and recreational fisheries as specified through the biennial harvest specifications process and consistent with allocations in the PCGFMP.

* * * * *

(d) *Commercial harvest guidelines.* To derive the commercial harvest guideline, the fishery harvest guideline is further reduced by the recreational set-asides. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery, as appropriate.

* * * * *

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For Pacific Coast treaty Indian fisheries, set-asides will be deducted from the TAC, OY, ACL, or ACT when specified. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts may be adjusted through the biennial harvest specifications and management measures process.

* * * * *

3. In § 660.60:

- a. Revise paragraph (d) introductory text, paragraph (d)(1) introductory text, and paragraph (d)(1)(i);
- b. Remove paragraph (d)(1)(iii);
- c. Redesignate paragraphs (d)(1)(iv) through (vii) as (d)(1)(iii) through (vi), respectively.

The revisions read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) *Automatic actions.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions will be initiated in the following circumstances:

(i) Close the MS or C/P sector when that sector's Pacific whiting allocation is reached, or is projected to be reached. The MS sector non-coop fishery will be closed by automatic action when the Pacific whiting or non-whiting allocation to the non-coop fishery has been reached or is projected to be reached.

* * * * *

4. In Table 1b to Part 660, Subpart C—2019, Allocations by Species or Species Group, Remove footnotes ‘c’ through ‘f’, and redesignate footnote ‘g’ as ‘c’.

5. Remove Table 1d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2019, and footnotes

6. Redesignate Table 1e to Part 660, Subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011 as Table 1d to part 660, Subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011.

7. Remove Table 2d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2020 and Beyond and footnotes

8. In § 660.111, amend the definition of *Ex-vessel value* by revising paragraph (3) to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value * * *

(3) For the C/P Coop Program, the value as determined by the aggregate pounds of all groundfish species catch (as defined in § 660.11) retained on board, by the vessel

registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced pursuant to § 660.115(b)(2).

* * * * *

9. In § 660.113, add paragraph (b)(1)(iv), and revise paragraphs (d)(5)(ii)(A)(2), (d)(5)(ii)(A)(4) and (5) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(iv) All owners of a quota share (QS) permit as defined at § 660.25(c).

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(A) * * *

(2) The weight of each species of groundfish retained on board,

* * * * *

(4) The ex-vessel value of each species of groundfish retained on board,

(5) The net ex-vessel value of each species of groundfish retained on board,

* * * * *

10. In § 660.114, revise paragraphs (a), (b), and (c) to read as follows:

§ 660.114 Trawl fishery—economic data collection program.

(a) *General.* The economic data collection (EDC) program collects mandatory economic data from participants in the trawl rationalization program. NMFS requires submission of EDC forms to gather ongoing, annual economic data, including, but not limited to the following categories of information related to participation in the trawl rationalization program:

(1) Annual data related to QS permit owner activity and characteristics of participation in the fishery, costs and earnings from quota trades, and quota leasing.

(2) Annual data related to costs, earnings, value, labor, operations, physical characteristics, ownership and leasing information for vessels, first receiver sites, or shorebased processors.

(b) *Economic data collection program requirements.* The following fishery participants in the limited entry groundfish trawl fisheries are required to comply with the following EDC program requirements:

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA.)
(1) Limited entry trawl catcher vessels.	(i) Annual/ongoing economic data.	(A) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit.	(1) For permit owner, a limited entry trawl permit application (including MS/CV-endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i). (2) For a vessel owner, participation in the groundfish fishery (including, but not

			<p>limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP or IBQ pounds) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(vi) and § 660.140(e).</p> <p>(3) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP or IBQ pounds if own QS or IBQ) will not be authorized, until the required EDC for their operation of that vessel is submitted.</p>
		(B) [Reserved]	
(2) Motherships.	(i) Annual/ongoing economic data.	(A) All owners, lessees, and charterers of a mothership vessel registered to an MS permit.	<p>(1) For permit owner, an MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i).</p> <p>(2) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(vi).</p> <p>(3) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.</p>

		(B) [Reserved]	
(3) Catcher processors.	(i) Annual/ongoing economic data.	(A) All owners, lessees, and charterers of a catcher processor vessel registered to a C/P-endorsed limited entry trawl permit.	(1) For permit owner, a C/P-endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i). (2) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(vi). (3) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
		(B) [Reserved]	
(4) First receivers/shorebased processors.	(i) Annual/ongoing economic data.	(A) All owners of a first receiver site license.	(1) A first receiver site license application will not be considered complete until the required EDC for that license owner associated with that license is submitted, as specified at § 660.140(f)(3). See paragraph (b)(4)(i)(A) of this table. (2) [Reserved]
		(B) All owners and lessees of a shorebased processor (as defined under “processor” at § 660.11, for purposes	

		of EDC) that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver.	
(5) Quota Share Permit Owners.	(i) Annual/ongoing economic data.	(A) All owners of a Quota Share permit and account (as defined under § 660.25 (c)).	(1) A Quota Share permit application or permit renewal package will not be considered complete until the required EDC for that permit is submitted, as specified at § 660.140, subpart D. (2) [Reserved]
		(B) [Reserved]	

(c) *Submission of the EDC forms, and deadline*—(1) *Submission of the EDC form.*

The complete, certified EDC forms must contain valid responses for all data fields, and must be submitted either by paper or web form submission as follows:

(i) *Paper form submission.* Paper forms must be submitted to ATTN: Economic Data Collection Program (FRAM Division), NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112.

(ii) *Web form submission.* Completed EDC web forms must be submitted electronically via the Economic Data Collection Program Web Form portal through NOAA.gov/fisheries and the signature page faxed, mailed, or hand-delivered to NWFSC.

(2) *Deadline.* Complete, certified EDC forms must be mailed and postmarked by or hand-delivered to NMFS NWFSC no later than September 1 each year for the prior year's data.

(3) *Quota Share Permit Owner Survey Submissions and Deadline.* Quota Share Permit Owner survey forms are submitted by webform only during the quota account application and renewal process specified at § 660.140 (d)(2). The complete certified Quota Share Permit Owner survey must be submitted no later than November 30 of each year.

* * * * *

11. In § 660.115, revise paragraphs (d)(1)(ii)(B) and (C) to read as follows:

§ 660.115 Trawl fishery—cost recovery program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish

buyer's own use and purposes. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment.

(C) *Deposit principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to the Fund subaccount to which the deposit principal relates. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Coop Program. The cost recovery form will be available on the *pay.gov* Web site.

* * * * *

12. In § 660.140, revise paragraph (d)(1)(ii) introductory text, paragraph (d)(2)(iii) introductory text, paragraphs (d)(3)(i)(D), (d)(3)(ii)(B)(2), (d)(3)(ii)(B)(3), (e)(3)(iii)(A) and (B), paragraph (e)(4)(i) introductory text, and paragraphs (e)(4)(ii), and (e)(5) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.*, decimal amounts less than 0.5 round down and 0.5 and greater round up). NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account between January 1 and December 31 of the year for which they were issued in order to be fished.

* * * * *

(2) * * *

(iii) *QS permit application process.* NMFS will accept a QS permit application from January 1 to November 30 of each calendar year. QS permit applications received between December 1 and December 31 will be processed by NMFS in the following calendar year. NMFS will issue only one QS permit to each unique person, as defined at § 660.11 subject to the eligibility requirements at paragraph (d)(2)(i) of this section. Each applicant must submit a complete application. A complete application includes a QS permit application form, payment of required fees, complete documentation of QS permit

ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, and a complete economic data collection form as required under § 660.114. NMFS may require additional documentation as it deems necessary to make a determination on the application. The QS permit application will be considered incomplete until the required information is submitted.

* * * * *

(3) * * *

(i) * * *

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, a complete economic data collection form as required under § 660.114. The QS permit renewal will be considered incomplete until the required information is submitted.

* * * * *

(ii) * * *

(B) * * *

(2) *Transfer of QS or IBQ between QS accounts.* QS permit owners may transfer QS or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.*, greater than or equal to 0.001 percent). QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS

percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

(3) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to annual vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by December 31 each year in order to be fished. All QP or IBQ pounds expire at the end of the post-season transfer period of the year after which they were issued. If, in any year, the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery or NMFS releases additional QP consistent with § 660.60(c) and paragraph (d)(1)(ii) of this section, NMFS will credit QS accounts with additional QP proportionally, based on the QS percent for a

particular QS permit owner and the increase in the shorebased trawl allocation specified at paragraph (d)(1)(ii)(D) of this section.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(A) *General.* QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. Transfers of QP or IBQ pounds are subject to annual vessel accumulation limits. QP or IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP or IBQ pound can be transferred). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.*, account reconciliation, system maintenance, or for emergency fishery management reasons).

(B) *Transfer procedures.* QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer request by logging onto the online vessel account. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (e.g., USCG documentation number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and

whether the transfer complies with vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred between vessel accounts at any time during January 1 through December 31 each year unless otherwise notified by NMFS. Unused QP from the previous fishing year (base year) may be transferred for the purpose of covering end-of-the-year vessel account deficits through the end of the post-season transfer period described at paragraph (e)(5)(iv) of this section.

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the annual QP vessel limit in any year, except as allowed by paragraph (e)(5)(iii) of this section. The annual QP vessel limit is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

* * * * *

(ii) *Trawl identification of ownership interest form.* Any person that owns a vessel registered to a limited entry trawl permit and that is applying for or renewing a vessel account shall document those persons that have an ownership interest in the vessel

greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not generate and issue a vessel account unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(5) *Carryover of Surplus and Deficit QP or IBQ.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year (the base year) to the next immediately following year or allows a deficit in a vessel account from fishing during the base year to be covered in the immediately following year with QP or IBQ pounds from the base year or the a immediately following year, up to a carryover limit without violating the provisions of this section.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ (unused QP or IBQ pounds) for any IFQ species following the post-season transfer period specified at paragraph (e)(5)(iv) of this section, may carryover for use in the year immediately following the base year amounts of unused QP or IBQ pounds up to its carryover limit specified at (e)(5)(ii) of this section, and subject to the limitations of this paragraph. After the post-season transfer period is concluded, NMFS will complete determination of surplus QP or IBQ pound amounts that may be carried over into the following year up to the surplus carryover limit specified at paragraph (e)(5)(ii) of this section. The amount of surplus QP or IBQ pounds issued as carryover will be reduced in proportion to any reduction in the ACL-between the base year and the immediately following year. At the end of the post-season transfer period, any base year QP or IBQ pounds remaining in vessel accounts will be suspended from use while NMFS calculates

annual surplus carryover amounts. NMFS will consult with the Council in making its final determination of the IFQ species and total QP or IBQ amounts to be issued as annual surplus carryover. After NMFS completes determination of the annual surplus carryover amounts for each vessel account, suspended QP or IBQ pounds in excess of the annual surplus carryover amount will expire. NMFS will subsequently release any remaining suspended QP or IBQ pounds for issuance as surplus carryover to vessel accounts from which they were suspended, and notify vessel account owners of the issuance. Surplus carryover QP or IBQ pounds are valid for the year in which they are issued (i.e. the year immediately following the base year). Surplus carryover amounts that would place a vessel above the annual QP vessel limits for the immediately following year (specified at paragraph (e)(4) of this section) will not be issued. Amounts issued as surplus QP or IBQ pounds do not change the shorebased trawl allocation in the year in which the carryover was issued. Surplus QP or IBQ pounds may not be carried over for more than one year.

(ii) *Surplus Carryover Limit.* The limit for the surplus carryover is calculated by multiplying 10 percent by the cumulative total QP or IBQ pounds (used and unused) transferred into a vessel account for the base year, less any transfers out of the vessel account, QP resulting from reapportionment of whiting specified at § 660.60(d), additional QP issued to the account during the year (as specified at § 660.60(c)(3)(ii)), and previous carryover amounts. The percentage used for the carryover surplus limit may be changed by Council recommendation during the biennial specifications and management measures process or by routine management measures as specified in § 660.60(c).

(iii) *Deficit QP or IBQ pounds* After the end of the base year, a vessel account may cover the full amount of any deficit (negative balance) of QP or IBQ pounds using QP or IBQ from the following year, base year QP or IBQ pounds, through the post-season transfer period, or a combination, without restriction by annual QP vessel limits. A vessel account acquiring QP or IBQ after the base year to cover a deficit resulting from catch in excess of the base year annual QP vessel limits may still be in violation of annual vessel QP limit provisions specified at paragraph (e)(4)(i) of this section, or other provisions of this section, if the deficit exceeds the deficit carryover limit specified at paragraph (e)(5)(iii)(B) of this section. If an IFQ species is reallocated between the base year and the following year due to changes in management areas or subdivision of a species group as specified at paragraph (c)(3)(vii) of this section, a vessel account will not carryover the deficit for that IFQ species into the following year. A vessel account with a deficit for any IFQ species in the base year, may cover that deficit during the post-season transfer period or with QP or IBQ pounds from the following year without violating the provisions of this section if all of the following conditions are met:

(A) The vessel account owner declares out of the Shorebased IFQ Program for the remainder of the year in which the deficit occurred. The vessel account owner must submit a signed, dated, and notarized letter to OLE, declaring out of the Shorebased IFQ Program for the remainder of the year and invoking the carryover provision to cover the deficit. Signed, dated, and notarized letters may be submitted to NMFS, West Coast Region, Office of Law Enforcement, ATTN VMS, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. If the vessel account owner covers the deficit later within the same calendar year, the vessel may re-enter the Shorebased IFQ Program. If the deficit is

documented less than 30 days before the end of the calendar year, exiting out of the Shorebased IFQ Program for the remainder of the year is not required.

(B) The amount of QP or IBQ pounds required to cover the deficit from the current fishing year is less than or equal to the vessel's carryover limit for a deficit. The carryover limit for a deficit is calculated as 10 percent of the total cumulative QP or IBQ pounds (used and unused, less any transfers out of the vessel account, and any previous carryover amounts) in the vessel account 30 days after the date the deficit is documented;

(C) Sufficient QP or IBQ pounds are transferred into the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year or the date the deficit is documented (whichever is later) but not later than the end of the post-season transfer period; and

(D) The total QP required to cover the vessel's total catch from the base year is not greater than the annual QP vessel limit for the base year.

(iv) *Post-Season QP or IBQ transfers.* A vessel account with a deficit (negative balance) of QP or IBQ pounds after December 31 for any IFQ species may conduct post-season transfers to cure the deficit by obtaining available unused QP or IBQ pounds remaining in other vessel accounts from the base fishing year. Vessel account owners may conduct post-season transfers of QP and IBQ pounds according to transfer procedures specified in paragraph (e)(3)(iii) of this section, and subject to the following conditions:

(A) Post-season transfers may be conducted during a period starting January 1 and ending 14 calendar days after NMFS has completed its determination of the total base year IFQ catch for all vessels for end-of-the-year account reconciliation. NMFS will issue

a public notice when end-of-the-year account reconciliation has been completed, on or about March 1 of each year.

(B) QP or IBQ pounds from the base fishing year transferred during the post-season transfer period may not be fished in any way, and may only be transferred for the purpose of covering deficits carried into the immediately following fishing year from the base fishing year.

(C) After the post-season transfer period, remaining QP and IBQ pounds surplus and deficits from the base fishing year are subject to carryover provisions specified at paragraphs (e)(5)(ii) and (e)(5)(iii) of this section.

* * * * *

13. In § 660.150 revise paragraphs (c) and (d)(1)(iii)(A)(I)(v) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) *MS Coop Program species and allocations*— (1) *MS Coop Program species*. All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs, as described in Table 1d to subpart C of this part.

(2) *Annual mothership sector sub-allocations*. Annual allocation amount(s) will be determined using the following procedure:

(i) *MS/CV catch history assignments*. Catch history assignments will be based on catch history using the following methodology:

(A) *Pacific whiting catch history assignment*. Each MS/CV endorsement's associated catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. If multiple MS/CV endorsements

and their associated CHAs are registered to a limited entry permit, that permit may be simultaneously registered to more than one MS coop or to both a coop(s) and non-coop fishery. Once assigned to a permitted MS coop or to the non-coop fishery, each MS/CV endorsement's catch history assignment remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established, the information for the conversion of catch history assignment to pounds will be made available to the public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.*, less than 0.5 rounds down and 0.5 and greater rounds up).

(1) In years where the Pacific whiting harvest specification is known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation for Pacific whiting will be made by the start of the season.

(2) In years where the Pacific whiting harvest specification is not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the MS Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the MS Coop Program.

(B) *Non-whiting groundfish species catch*—(1) At-sea set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest

specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(2) Groundfish species not addressed in paragraph (c)(2)(i)(B)(I) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

(3) Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N. lat.

(C) *Rounding rules and MS/CV allocations.* Rounding rules may affect distribution of the MS Coop Program allocations among the catch history assignments for individual MS/CV-endorsed permits. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation.

(ii) *Annual coop allocations—(A) Pacific whiting.* Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each member MS/CV-endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop do not bring catch allocation to a permitted MS coop.

(B) *Single MS/CV Coop Fishery.* If all MS/CV-endorsed permits are members of a single coop in a given year and there is not a non-coop fishery, then NMFS will allocate 100 percent of the MS Coop Program allocation to that coop.

(iii) *Annual non-coop allocation*—(A) *Pacific whiting*. The non-coop whiting fishery is authorized to harvest a quantity of Pacific whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.

(B) *Announcement of the non-coop fishery allocations*. Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a FEDERAL REGISTER announcement and/or public notice and/or the NMFS Web site.

(3) *Reaching an allocation or sub-allocation*. When the mothership sector Pacific whiting allocation, or Pacific whiting sub-allocation is reached or is projected to be reached, the following action may be taken:

(i) Further harvesting, receiving or at-sea processing by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation is projected to be reached. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a mothership may continue to process catch that was on board before at-sea processing was prohibited. Pacific whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(ii) When a permitted MS coop sub-allocation of Pacific whiting is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an NMFS-accepted inter-coop agreement.

(iii) When the non-coop fishery sub-allocation of Pacific whiting is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in the non-coop fishery must cease.

(4) [Reserved]

(5) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the mothership sector allocation of Pacific whiting is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(6) *Redistribution of annual allocation—(i) Between permitted MS coops (inter-coop).* (A) Through an inter-coop agreement, the designated coop managers of permitted MS coops may distribute Pacific whiting allocations among one or more permitted MS coops, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

(1) *Between the MS coop and non-coop fisheries.* Pacific whiting may not be redistributed between the coop and non-coop fisheries.

(2) *Between Pacific whiting sectors.* Pacific whiting may not be redistributed between the mothership sector and catcher/processor sector. Whiting may not be redistributed to the Shorebased IFQ Program.

(7) *Processor obligation and mutual agreement exceptions—(i) Processor obligation.* Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated for each MS/CV endorsement and associated catch history assignment.

(ii) *Expiration of a processor obligation.* Processor obligations expire at the end of each calendar year when the MS Coop Permit expires.

(iii) *Processor obligation when MS coop allocation is redistributed.* When a permitted MS coop redistributes Pacific whiting allocation within the permitted MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such allocations must be delivered to the mothership registered to the MS permit to which the allocation was obligated under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* An MS/CV-endorsed permit's catch history assignment can be released from a processor obligation through a mutual agreement exception. The MS/CV-endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the

release of the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner must identify a processor obligation for a new MS permit.

(v) *MS permit withdrawal.* If an MS permit withdraws from the mothership fishery before the resulting amounts of catch history assignment have been announced by NMFS, any MS/CV-endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the MS permit owner must provide written notification of its withdrawal to NMFS and all MS/CV-endorsed permits that are obligated to the MS permit, and the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for a new MS permit.

(vi) *Submission of a mutual agreement exception or MS permit withdrawal.* Written notification of a mutual exception agreement or MS permit withdrawal must be submitted to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115.

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(I) * * *

(v) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

* * * * *

14. In § 660.160:

- a. Revise paragraph (c)(1) introductory text, paragraphs (c)(1)(i), (c)(3)(i) and (ii);
- b. Remove paragraph (c)(3)(iii);
- c. Remove and reserve paragraph (c)(5);
- d. Revise paragraphs (c)(6), (c)(7), and (d)(1)(iii)(A)(1)(iii), and paragraph (e)(1)

introductory text;

- e. Add paragraph (e)(1)(iv);
- f. Revise paragraph (h)(1) introductory text, and paragraphs (h)(2) through (4);
- g. Add paragraph (h)(5).

The revisions and additions read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(c) * * *

(1) *C/P Coop Program species*. All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs.

- (i) Species with formal allocations to the C/P Coop Program: Pacific whiting.

* * * * *

(3) * * *

(i) At-sea sector set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason

action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(ii) Groundfish species not addressed in paragraph (c)(3)(i) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

* * * * *

(5) [Reserved]

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the catcher/processor sector allocation of Pacific whiting is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF),

followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(I) * * *

(iii) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

* * * * *

(e) * * *

(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery-must be registered to a valid limited entry permit with a C/P endorsement-subject to the limited entry permit provisions given at § 660.25(b).

* * * * *

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing a C/P-endorsed permit shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a C/P-endorsed permit unless the Trawl Identification of Ownership Interest Form has been completed.

* * * * *

(h) * * *

(1) *Conditions for determination of coop failure.* The Regional Administrator will determine that a permitted C/P coop has failed if any one of the following occurs:

* * * * *

(2) *Notification of coop failure.* If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop to allow the Regional Administrator to make a determination of coop failure. The Regional Administrator may also make an independent determination of a coop failure based on factual information collected by or provided to NMFS. NMFS will notify the designated coop manager in writing in the event the Regional Administrator determines the coop has failed.

(3) *Coop permit no longer in effect.* Upon determination of a coop failure, the C/P coop permit will no longer be in effect.

(4) *Conversion to IFQ Fishery.* The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a determination of a coop failure, or as soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ-based fishery for the C/P sector. Each C/P-endorsed permit will receive an equal amount of QS from the total C/P sector allocation. That QS will not be transferable separate from the C/P-endorsed permit until a determination is made to allow such transfers, necessary regulations are implemented, and public notice is provided. Any use of QP or IBQ pounds associated with C/P endorsed permits is prohibited until the regulations for a C/P sector IFQ system are implemented.

(5) *Accumulation Limits.* C/P Sector accumulation limits will take effect in the event that the C/P coop fails and converts to an IFQ-based fishery. If an IFQ fishery is implemented, any individual or entity may own or control a maximum of five C/P endorsed permits and QS allocations associated with those permits, as described in paragraph (e)(5)(iv) of this section. C/P endorsed permit accumulation limits will only take effect after determination of a coop failure is made and the following administrative process occurs:

(i) *Divestiture Period.* Upon determination of a coop failure, a divestiture period will occur starting with the date that co-op failure has been determined and running through the date on which an IFQ program is implemented for the C/P sector or another date specified in the IFQ program implementing regulations. During the divestiture period, an individual or entity may not acquire ownership or control over a total of more than five C/P-endorsed permits. Any entity that already owns or controls more than five C/P-endorsed permits may not acquire additional permits. During the divestiture period any entity who owns or controls C/P-endorsed permits may sell or trade any permits it owns. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section.

(ii) *Divestiture and redistribution process.* After conversion to an IFQ fishery and completion of the divestiture period, any person owning or controlling C/P-endorsed permits must be in compliance with accumulation limits, even if that ownership is not reflected in the ownership records available to NMFS as specified at § 660.140 (e)(1)(iv). Permit owners found to exceed the five permit accumulation limit for C/P-endorsed permits after the divestiture period are in violation of the accumulation limits and

required to completely divest of ownership or control of C/P-endorsed permits that exceed the accumulation limit. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section. If NMFS finds that any entity owns or controls more than five C/P-endorsed permits, NMFS will make an Initial Administrative Determination (IAD) that the entity must divest of control or ownership of permits that exceed the accumulation limit within 30 days or NMFS will revoke the excess permits in accordance with § 660.25(h)(2)(ii). The permit owner will have the opportunity to appeal the IAD through the National Appeals Office under the provisions established at 15 CFR part 906. All QS associated with revoked permits will be redistributed to all other C/P-endorsed permit owners in proportion to their QS holdings, based on current ownership records, on or about January 1 of the calendar year following the year in which the permits are revoked. This redistribution process will not allow any entity to receive more than 50 percent of the total QS allocations for the C/P sector.

(iii) *Abandonment of C/P-endorsed permits.* C/P-endorsed permits owners that own or control more than the five permit accumulation limit may voluntarily abandon C/P-endorsed permits if they notify NMFS in writing during the divestiture period specified at paragraph (h)(5)(i) of this section or within 30 days of conversion to an IFQ fishery. The written abandonment request must include the C/P endorsed permit number and the associated QS allocation percentage that will be abandoned. Either the C/P-endorsed permit owner or an authorized representative of the C/P-endorsed permit owner must sign the request. C/P-endorsed permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned C/P-endorsed

permit, and the QS associated with that permit will be redistributed as described under paragraph (h)(5)(ii) of this section. No compensation will be due for any abandoned permit, or associated QS or QP.

(iv) *Review of C/P-permit ownership interest and accumulation limits.* NMFS may request additional information from C/P-permit owners as necessary to verify compliance with accumulation limits in the event of C/P coop failure and conversion to IFQ fishery. If NMFS discovers through review of the Trawl Identification of Ownership Interest Form that a person is not in compliance with accumulation limits, the person will be subject to divestiture provisions specified in paragraph (h)(5)(ii) of this section.

(v) *Definition of Ownership or Control.* For the purpose of determining ownership or control a person or entity has over a C/P endorsed permit, all of the following criteria apply:

(A) The person or entity has the right to direct, or does direct, in whole or in part, the business of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(B) The person or entity has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the C/P permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(C) With the exception of banks and other financial institutions that rely on permits as collateral for loans as described under paragraphs (h)(5)(v)(G) of this section, the person or entity has the right to direct, or does direct, and/or the right to prevent or

delay, or does prevent or delay, the transfer of the C/P permit associated QS, or the resulting QP.

(D) The person or entity, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(E) The person or entity has the right to restrict, or does restrict, any activity related to the C/P permit, associated QS or the resulting QP, including, but not limited to, use of permits, or associated QS, or disposition of fish harvested and processed under the resulting QP, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(F) The person or entity has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the C/P permit, associated QS, or the resulting QP, are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(G) With the exception of banks and other financial institutions that rely on permits as collateral for loans, the person or entity has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of C/P permits, associated QS, or the resulting QP.

(I) To qualify for this exception for banks and other financial institutions that rely on permits as collateral for loans, a bank or other financial institution must be regularly or primarily engaged in the business of lending, and must not be engaged in business with,

or be controlled by, entities whose primary business is the harvesting, processing, or distribution of fish or fish products.

(2) Any state or federally chartered bank or financial institution that meets the requirement of paragraph (h)(5)(v)(G)(1) of this section does not need to submit additional information to NMFS.

(3) Any entity that is not a state or federally chartered bank or financial institution must submit a letter requesting the exception and disclose the identity and interest share of any shareholder with a 2 percent or more ownership interest in the lender through submission of the Trawl Identification of Ownership Interest Form (see paragraph (e)(1)(iv) of this section). The lender must make subsequent annual submissions of the letter and Trawl Identification of Ownership Interest Form to maintain the exception. Letters requesting the exception and complete Trawl Identification of Ownership Interest Forms may be submitted to NMFS, West Coast Region, Permits Office, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only accept complete applications.

(H) The person or entity has the ability through any means whatsoever to control or have a controlling influence over the entity to which a permit associated QS is registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

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